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School Finance Litigation: McCleary v. State of  
Washington

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9-16-2009

**Reporter's Verbatim Report of Proceedings, September 16, 2009,  
Volume X--Session 1 of 4 [Pages 2009-2085] 07-2-02323-2**

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR KING COUNTY

3

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4 MATHEW and STEPHANIE McCLEARY, )  
 on their own behalf and on )  
 5 behalf of KELSEY and CARTER )  
 McCLEARY, their two children in )  
 6 Washington's public schools; ) SUPREME COURT OF WA  
 ROBERT and PATTY VENEMA, on their) 84362-7  
 7 own behalf and on behalf of HALIE)  
 and ROBBIE VENEMA, their two )  
 8 children in Washington's )  
 public schools; and NETWORK )  
 9 FOR EXCELLENCE IN WASHINGTON )  
 SCHOOLS ("NEWS"), a state-wide )  
 10 coalition of community groups, )  
 public school districts, and )  
 11 education organizations, )  
 )  
 12 Petitioners, ) KING COUNTY CAUSE  
 ) No. 07-2-02323-2 SEA  
 13 vs. )  
 )  
 14 STATE OF WASHINGTON, )  
 )  
 15 Respondent. )

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17 REPORTER'S VERBATIM REPORT OF PROCEEDINGS

18 --oOo--

19 WEDNESDAY, SEPTEMBER 16, 2009  
 VOLUME X - Session 1 of 4

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21 --oOo--

22 Heard before the Honorable John P. Erlick, at King  
 23 County Courthouse, 516 Third Avenue, Room W-1060,  
 24 Seattle, Washington.

25 --oOo--

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CYNTHIA A. KENNEDY, RPR  
CSR No. 3005  
Official Court Reporter  
King County Superior Court  
516 Third Avenue, C912  
Seattle, Washington 98104  
  
(206) 296-9188

1                   A P P E A R A N C E S:

2

                  --oOo--

3

4   THOMAS F. AHEARNE, CHRISTOPHER G. EMCH, and  
5   EDMUND W. ROBB, Attorneys at Law, appearing on behalf  
6   of the Petitioners;

6

7   WILLIAM G. CLARK and CARRIE L. BASHAW, Assistant  
8   Attorney Generals, appearing on behalf of the  
9   Respondent.

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10                   --oOo--

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## 1 CHRONOLOGICAL INDEX

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4 WEDNESDAY, SEPTEMBER 16, 2009 - Morning Session

5 ROGER SODER (Resumed)

6 Direct by Mr. Robb 2016

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7 Redirect by Mr. Robb 2072

8 Recess - change in court reporters 2085

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## 1 EXHIBIT INDEX

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4 EXHIBIT ADMITTED

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1 SEATTLE, WASHINGTON

2 WEDNESDAY, SEPTEMBER 16, 2009

3 MORNING SESSION - 9:00 A.M.

4 --oOo--

5 THE COURT: Good morning. Please be seated.

6 We are back on the record in the matter  
7 of McCleary versus State of Washington, King County  
8 cause number 07-2-02323-2 Seattle. We remain in the  
9 petitioner's case in chief, and I believe Professor  
10 Soder is on the stand.

11 Are there any preliminary matters before  
12 we put Professor Soder back on?

13 Mr. Emch?

14 MR. EMCH: Your Honor, we have a submission  
15 for the Superintendent of the Moses Lake School  
16 District, Mr. Steve Chestnut. Are we ready to do  
17 that?

18 MS. BASHAW: Sure.

19 THE COURT: I'm sorry. This is a  
20 deposition?

21 MR. EMCH: This is a deposition designation.

22 THE COURT: Okay. All right. Why don't  
23 you -- same procedure as before, original to file and a  
24 court copy; is that correct? Or am I ruling on these?

25 MS. BASHAW: I think there are maybe a couple

1 of objections in there. They aren't big ones. I think  
2 one thing that we might do as we introduce these, Your  
3 Honor, is to go ahead and offer the exhibits that we're  
4 also trying to do and we're way behind in having been  
5 able to get back to the Bergeson exhibits, and so --

6 THE COURT: Correct.

7 MS. BASHAW: -- offering the dep now and  
8 maybe we could offer the exhibits at the same time.

9 THE COURT: All right. Let's do this:  
10 Because we've got Professor Soder here, let's go ahead  
11 and take his testimony and then do this in one of our  
12 recesses, or let's do it at the end of the day. I  
13 don't know that I have a four o'clock today. I'll  
14 check.

15 THE CLERK: We do.

16 THE COURT: I do have a four o'clock today.  
17 Thank you. Okay. But let's find a time we're not  
18 going to hold up a witness and then we'll do the  
19 exhibits at that time. Thank you, counsel.

20 MR. EMCH: Thank you, Your Honor.

21 THE COURT: Okay. All right. Anything  
22 else?

23 Okay. Professor Soder, if you would  
24 please retake the stand. Professor Soder, good  
25 morning.



1 THE WITNESS: Good morning.

2 THE COURT: You remain under oath from  
3 yesterday's testimony. You may be seated.

4 THE WITNESS: Thank you.

5 THE COURT: Mr. Robb.

6 MR. ROBB: Thank you. Good morning, Your  
7 Honor.

8 ROGER SODER (Resumed),  
9 called as a witness herein, having been first duly  
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION (Resumed)

12 BY MR. ROBB:

13 Q. Good morning, Professor Soder. We spent some  
14 time yesterday going over your education, background  
15 and scholarship. I'd like to go ahead and dive right  
16 into your opinions that you're going to offer in this  
17 case.

18 Could you please start by telling us why --  
19 well, first I should ask what the basis is for the  
20 opinions you're going to offer here.

21 A. The basis for my testimony this morning -- or  
22 in this trial is some 35 years of research and work  
23 with schools, K-12 schools, higher education schools,  
24 community advocacy organizations.

25 Q. The experiences that you testified to

1 yesterday.

2 A. That's correct.

3 Q. Okay. Could you start by telling us why  
4 you've concluded, or as you said yesterday, that  
5 democracy in the schools are necessarily connected?

6 A. Right. I had indicated that there is a  
7 necessary relationship between democracy and education  
8 in the schools. And my opinion would go as follows:  
9 In order to have and sustain a healthy, authentic  
10 democracy, we have to first identify the conditions  
11 that have to be in place for that democracy to be  
12 sustained. The democracy, like any other political  
13 regime, does not sit there pulsating. There have to be  
14 conditions in place. And, by conditions, a simple  
15 example I would give is, if you're having a problem  
16 with mosquitos and you want to get rid of the  
17 mosquitos, you don't go after the individual mosquito.  
18 You go after the pond. The pond in this case is an  
19 enabling condition for the mosquito.

20 Or another very quick one, if I want to get  
21 to San Francisco this evening, I can do so, but there  
22 have to be conditions in place. I have to have a  
23 ticket. There has to be a plane. The weather  
24 conditions have to be in order, and so forth.

25 So we have to identify the necessary

1 conditions for a democracy. I have identified, based  
2 on my research over these many years, 12 such necessary  
3 conditions.

4 Q. So why 12, I guess is -- why 12?

5 A. There possibly could be more. I have worked  
6 with many, many groups over the years, K-12 faculty,  
7 higher ed faculty, community groups, on these 12  
8 conditions, and sometimes groups will add in an  
9 additional condition or change the wording here and  
10 there, but no group I have worked with over the years  
11 has ever subtracted any one of the 12 that I have  
12 identified.

13 Q. So I'll ask you next to take us through the  
14 conditions. But, before I do, are these in any order  
15 of importance?

16 A. They are all equally important. They are all  
17 necessary. There is no priority order here.

18 Q. Okay. So why don't you start then by talking  
19 about the first condition that you've identified.

20 A. Okay. I will lump the first three conditions  
21 together. They are trust, exchange, and social  
22 capital.

23 Q. What do you mean by trust and exchange and  
24 social capital?

25 A. Okay. By trust I am talking about the basic

1 relationships that people have to have with each  
2 other. The opposite of a good situation of trust can  
3 be found in Thucydides and the history of the  
4 Peloponnesian War describing the Revolution of Corcyra  
5 where he says that, The reconciliation only lasted as  
6 long as no other weapon was at hand. Then we had, in  
7 effect, the war of all against all.

8           There has to be a basic level of trust  
9 between all of us, not just between people that we know  
10 within our family but also strangers, in affect. It's  
11 a complicated matter because we also know there is such  
12 a thing as blind trust. We don't want blind trust.  
13 It's complicated further because trust can be  
14 violated. It's important to have trust. It's probably  
15 even more important to figure out how to recover trust  
16 once it has been violated.

17       Q.     Okay.

18       A.     Now, there's lots of literature on the  
19 subject, which I will not cite here. I do in my  
20 books. But let me move to the second related condition  
21 and that is the notion of exchange.

22           THE COURT: Professor, before you go there,  
23 for the sake of the court reporter and myself, who is  
24 the Greek you mentioned?

25           THE WITNESS: Thucydides.

1 THE COURT: Thucydides.

2 THE WITNESS: The history of the  
3 Peloponnesian War.

4 THE COURT: All right.

5 MR. ROBB: We can go to the spellings at the  
6 close of the testimony if that would help.

7 THE COURT: Thank you. I just wasn't  
8 familiar with -- is this a writer or philosopher?

9 THE WITNESS: He's probably the first  
10 historian writing about the Peloponnesian War , which  
11 was in 5th Century Greece, BCD.

12 THE COURT: Thank you.

13 BY MR. ROBB:

14 Q. You were going to begin with the second  
15 condition.

16 A. Okay. The second condition is the notion of  
17 exchange. By exchange I'm not talking about when you  
18 go into the grocery store and you buy some groceries or  
19 put them in your cart and then you pay for them and so  
20 you have an exchange of money and goods.

21 I'm talking about the kind of exchange that  
22 happens, say, with our neighbors. When they go on  
23 vacation up to their cabin for the weekend, we look out  
24 for their house, make sure that everything is in  
25 order. And when we go someplace, they make sure that,

1 if we have forgotten to stop the paper, they'll take  
2 the papers in so you don't have a lot of papers piling  
3 up outside.

4           In neither case do we find that I'm going to  
5 say, gee, Heather, it's really nice that you did that  
6 and, here, let me pay you. You know, that certainly  
7 would be an insult. What we're talking about is I do  
8 something for you, you do something for me. This  
9 engenders some sort of relationship, which is then  
10 related also to trust.

11           Both trust and exchange are related to the  
12 notion of social capital, and that is, we can talk  
13 about financial capital. We can talk about human  
14 capitals, we do in HR situations. But social capital  
15 involves -- we figure out how to get together and then  
16 we learn to work together for some common goal rather  
17 than just maximizing our own individual self-  
18 interests.

19           These three conditions were identified,  
20 perhaps most strongly and effectively, by Robert Putnam  
21 who is a Professor of Political Science at Harvard  
22 University.

23           In a classic book called Making Democracy  
24 Work, Civic Traditions in Modern Italy. What Professor  
25 Putnam found is that over the period of many hundreds

1 of years, southern Italy has had very little trust  
2 exchange of social capital, on the other hand, northern  
3 Italy has. There are critical conditions for the  
4 sustenance and continuing of a democracy.

5 Q. And then moving on to the fourth condition.  
6 What is that?

7 A. The fourth condition I've identified is  
8 respect for equal justice under law. Words I first saw  
9 in the Supreme Court building in Washington D.C. when I  
10 was 11 years old, back in 1954.

11 If you don't have equal justice under law, if  
12 you don't have justice, again, all you have with Hobbes  
13 is the war of all against all.

14 And, again, if I may go back to Thucydides  
15 one more time, he gives us what happens when the  
16 Lithuanians, who became a great imperial power, they go  
17 into the neutral Island of Milos and they say to the  
18 people of Milos, we are going to take you over. And  
19 the Milians respond by saying that, but what about  
20 justice, what about our rights, and the Lithuanians  
21 laugh and say, you don't understand. The rights are  
22 only in question between equals in power, while the  
23 strong do what they will, and the weak suffer what they  
24 must.

25 They had the same sense of justice that

1 Thucydides does in the republic where Plato tells us  
2 about where he says, Justice is whatever is in the  
3 interest of the stronger.

4           That certainly is not what we need to have.  
5 What we need to have is not only equal justice under  
6 law, but respect for equal justice under law, that  
7 people must -- all people must understand the  
8 importance of the rule of law, as Cicero said, Law is  
9 the bond of civil society.

10       Q.     And continuing on with the fifth condition.

11       A.     Okay. The fifth condition and one that  
12 certainly would apparently be in the news once again a  
13 whole lot is the notion of respect for civil  
14 discourse.

15           Might point out yesterday, as you probably  
16 know, that the House of Representatives reprimanded one  
17 of its members for, in effect, lack of civil  
18 discourse.

19           But we are never going to be able to get  
20 anywhere in a democracy unless we all know how to talk  
21 to each other effectively and with respect.

22           And here, if I may give an example going back  
23 to early 1990's, Seattle was experiencing a severe  
24 drought. The water department reported to the Mayor,  
25 Norm Rice, and to the City Council that we were going



1 to be running out of water unless we said that nobody  
2 could water their lawns. We'd had, in previous years,  
3 you could water your lawn every other day or if your  
4 last name began with A through K or what have you. But  
5 this was the first time, to my knowledge, as a Seattle  
6 native and one used to, when I was a kid running around  
7 with the sprinkler all summer to keep the lawn green,  
8 this was the first time we said flat out you can't  
9 water your lawn.

10           What happened is that there was a lot of  
11 discussion. People did not simply say, okay, we will  
12 not water our lawn. In effect, they said to the water  
13 department and to the mayor and the City Council, prove  
14 it. And there were lots of discussions and lots of  
15 community organizations and groups. It was discussed a  
16 lot in the papers and then we proceeded, of course, not  
17 to water our lawn, as you could imagine. Again, this  
18 comes back to the notion of the a civil society.

19           There are never enough water police to go  
20 around to see whether you're watering your lawn in MR.  
21 ROBB of the night, although, presumably, if everybody  
22 else's lawn was brown going down the block and yours  
23 was green, well, then they would have some idea you  
24 were cheating. But there are only three days, as I  
25 recall, that Seattle did not meet its water -- what the

1 target was for water usage.

2           This gives us some indication -- again, we're  
3 talking about social path rule when we are talking  
4 about the civil discourse and people talking with each  
5 other. So that would be --

6       Q.     The fifth condition.

7       A.     -- the fifth condition.

8       Q.     And the sixth?

9       A.     The sixth condition is recognition of the  
10 necessity of E pluribus unum, out of many one -- of  
11 many one.

12           The motto of the country is not E pluribus  
13 pluribus nor is it E unum unum. But we have to figure  
14 out how to maintain the necessary tension between being  
15 who we are as individuals, who we are in terms of our  
16 religion, our political affiliation, and, at the same  
17 time, understanding that there has to be some glue that  
18 holds the political regime and the democracy together.

19       Q.     The seventh condition?

20       A.     The seventh condition is free and open  
21 inquiry.

22           And, again, if I can go back to the drought  
23 in Seattle, there were people who were perfectly  
24 capable, some people, of going down to the water  
25 department and say, we want to see the records, we want

1 to see how you decided that this was the best  
2 alternative to deal with the water crisis that we have,  
3 and we wanted to know what are the other alternatives  
4 that you wanted to consider.

5           Now, the opposite of free and open inquiry,  
6 and as a very quick example, some years ago my wife and  
7 I were traveling in far western China in the Xinjiang  
8 Province, the Wigger country. We were in Kashgar, and  
9 the people at the hotel, when we asked for whether  
10 there was an Internet we could use, they said oh,  
11 absolutely, come in and use our Internet. There was  
12 only one problem. There is no access to any of the  
13 places I wanted to get to, CNN.com, ABC.com,  
14 WashingtonPost.com. And, again, you can find right now  
15 that virtually all of the Internet access in Kashgar  
16 has been shut down.

17           In the same way, very quickly, if you look at  
18 what's happening in Russia. You know, after the  
19 blessed fall of the Soviet Union, they opened up the  
20 archives and scholars were able to go in and start  
21 finding out what was going on. Very recently, Putin  
22 has shut down all of the access to the archives.  
23 Everything is closed.

24           If you don't have free and open inquiry, you  
25 cannot have a democracy.

1       Q.     And what is the next condition that you  
2 identified?

3       A.     The next condition that I've identified is  
4 knowledge of your rights. If you don't know what your  
5 rights are, you're going to get run over.

6             This is something expressed much more  
7 elegantly by President George Washington in his first  
8 annual address to Congress where he said that We will  
9 not be able to keep what we have unless there is an  
10 enlightened citizenry, and he said, That people must  
11 know themselves their rights and they must value those  
12 rights.

13            It is not enough to know what you're rights  
14 are but you have to value them. And you have to know  
15 when they're being violated.

16       Q.     Okay. And the next condition?

17       A.     The next condition I have identified,  
18 fundamental to all of these, is the notion of freedom.  
19 By freedom, I mean the ability to define and carry out  
20 purposes.

21            If I may, again, these are perennial issues,  
22 and in my books I cite a number of authors, historical  
23 examples, and I do that for the reason these are  
24 perennial issues. They're not something new.

25            Here I think we can go back to Herodotus and

1 his histories of the Persian War back around 480 or so  
2 BCE. There is a break in the action. The Greeks are  
3 fighting Persia. They're in a province in Persia, and  
4 they are being entertained by a local governor, a local  
5 satrap and he says to these Greek generals, he says,  
6 Why are you fighting so hard? Why are you going  
7 through all of this? Why don't you just give up? You  
8 know, the Persian King will be good to you. You'll  
9 have a good life. And the Greeks respond saying That  
10 you are a bad counselor because you only know half the  
11 story. The slaves' life you don't understand but never  
12 having tasted liberty, you do not know whether it be  
13 sweeter or not. Had you known what freedom was, you  
14 would have been in the fight for it.

15 Freedom is absolutely essential to any sort  
16 of democracy.

17 Q. And the next condition?

18 A. The next condition is related to the notion  
19 of freedom. It is an understanding of the necessary  
20 tension between freedom and order. Or as Leo Strauss  
21 said, We have to understand the tension between liberty  
22 that is not licensed and order that is not an  
23 oppression.

24 It's not that we -- people have to understand  
25 that we do not want either one or the other, that there

1 has to be maintained a necessary tension between  
2 freedom and order in the same way that there is tension  
3 between the walls and the ceiling here, and if there  
4 wasn't this tension, then the walls or the ceiling will  
5 fall in.

6           I have separated out this condition from the  
7 notion of freedom itself because I think there is,  
8 based on, again, my own reading over many years, a  
9 tendency for that tension to be resolved in the  
10 direction of order.

11           And, here again, we can think of, in ancient  
12 times, we can go back to the archetypal example of  
13 Sparta, where Sparta traded almost entirely total order  
14 and no freedom, and it became a strong military state  
15 for awhile.

16           In our own time, we can look at Singapore.  
17 My wife and I went to Singapore specifically for the  
18 reason that I wanted to see Singapore with my own eyes  
19 because, again, in dealing with the tension between  
20 freedom and order, Singapore has clearly gone in the  
21 direction of order. And there is very little political  
22 freedom, although you're safe to walk around the  
23 streets at night. And there is very little bubble gum,  
24 or what have you. But as I say in my classes, I see no  
25 reason why we have to abrogate all of our civil

1 liberties in order to have safe streets. Surely, we're  
2 smarter than that.

3 Q. And what is the next condition?

4 A. The next condition is an understanding of the  
5 distinctions to be made between a persuaded audience  
6 and a more thoughtful public.

7 Q. What do you mean by that?

8 A. Okay. Persuaded audience we can find, to  
9 some extent -- and I've written about this in my book  
10 on leadership. One of the functions of leadership is  
11 to persuade others. Something, again, that Thucydides  
12 also tells us.

13 But a persuaded audience is not such. A  
14 lynch mob can be a persuaded audience. We all agree,  
15 yep, let's hang the guy. If you think of the Nuremberg  
16 rallies in Nazi Germany in the '30s. There is a  
17 persuaded audience, but, surely, that is not enough.  
18 In fact, it's highly dangerous.

19 What we need is to be a more thoughtful  
20 public, a public in some way capable of rising above  
21 itself. The notion of persuaded audience implies an  
22 audience is like the passive recipient of information,  
23 whereas the public is an active seeker of information.

24 Again, I can see how these are related to the  
25 notion of being able to seek information, free and open

1 inquiry.

2 Q. And the final condition?

3 A. The twelfth condition that I've identified is  
4 ecological understanding. Here I am not talking about  
5 some trendy, let's be green thing, but very simply put,  
6 as Gregory Bason has so eloquently put it, The organism  
7 that destroys its environment destroys itself.

8 My wife and I have traveled in parts of  
9 Uzbekistan where the rivers have dried up, wherein the  
10 interest of monoculture in cotton production, the  
11 rivers are gone. The RLC, is for all intents and  
12 purposes, gone. You can walk across one of the great  
13 rivers that fed the RLC. I walked across that river in  
14 Kashkent and didn't get my feet wet. There is no way  
15 that you can have any sort of democracy if the  
16 environment is crumbling around you.

17 And as one less ancillary part of that  
18 condition is the notion of the long concept of time,  
19 that a democracy has to depend on us thinking long  
20 term. Long term does not mean next year or even a  
21 decade from now, but very, very long term.

22 Those are the 12 conditions -- minimal  
23 conditions, all equally important, that I have  
24 identified in my work.

25 Q. Okay. Well, thank you. And those are the 12



1 conditions.

2           Now, what are the implications of those  
3 conditions for the schools?

4       A.     In order to have a democracy, you have to  
5 have those 12 conditions. You have to ask yourself,  
6 necessarily, is knowledge of those 12 conditions known  
7 from birth? Is that part of your DNA programming? Or  
8 is it part of, like, your medulla oblongata, or do they  
9 have to be learned? The answer clearly is they have to  
10 be learned.

11           If you say they have to be learned, the next  
12 question you necessarily have to ask is where. Now, if  
13 we were talking about some oligarchy, some sort of  
14 aristocracy, we might say, well, the conditions for  
15 that kind of political regime only have to be learned  
16 by -- again, as I said yesterday -- by a Mandarin  
17 class, the top 10 percent or whatever, just the few  
18 elite. But when we're talking about a democracy and  
19 we're talking about all people, all citizens, we are  
20 citizens, not subjects in a democracy, and all people  
21 need to understand those 12 conditions.

22           If that is so, then we have to -- and we say  
23 that these conditions have to be learned, then we have  
24 to say, where is it likely -- what's the likelihood for  
25 all people to learn about these conditions? Where that

1 is is in the common public schools. Yes, you learn  
2 about some of this at home, you can learn about it in a  
3 church or other religious organization, you can learn  
4 about some of this perhaps in the Boy Scouts or the  
5 Campfire Girls, but we have to look for where is the  
6 place that the likelihood is greatest that all people  
7 will learn about these necessary conditions. That  
8 place is the common public school.

9 Q. And when you talk about learning these  
10 conditions, is this, for example, a civics class where  
11 you learn about the three branches of government, et  
12 cetera?

13 A. Well, that, in part, but if you go back to  
14 the example of the drought and not being able to water  
15 your lawn, in order to participate authentically in the  
16 action there in that kind of discussion, you need to  
17 know a lot more than how a bill becomes law or the  
18 three branches of the government and that sort of  
19 thing.

20 So we're talking about there are fundamental  
21 basic levels of education that all people need to have  
22 in terms of information seeking, in terms of writing,  
23 speaking, mathematics, being able to process  
24 information.

25 Q. And understanding of science, for example?

1       A.     Understanding science.

2       Q.     I'm going to hand you what's been marked as  
3 Exhibit 2. Ask you to review that.

4       A.     (Reviewing.) I know what this is.

5       Q.     Okay. Do you recognize that as from the  
6 Seattle School District Opinion?

7       A.     Yes, I do.

8       Q.     Familiar with that Opinion?

9       A.     Yes.

10      Q.     Is that consistent with the kind of education  
11 that you're talking about?

12      A.     This is entirely consistent. It must prepare  
13 them, that is citizens, to be able to inquire, to  
14 study, to evaluate, and to gain maturity and  
15 understanding. And it goes on to say, that this all  
16 would be hollow, indeed, if the possessor of the right  
17 could not compete adequately in our open political  
18 system, in the labor market, or in the marketplace of  
19 ideas.

20             So it's precisely what I'm talking about  
21 here. It's my 12 conditions in the role of schools.

22      Q.     I'd like to talk about a few other examples  
23 in addition to the drought example that you've given.

24             Turn to Trial Exhibit 560. I'll trade you  
25 binders.

1       A.     Okay.

2       Q.     Thank you.  If you could take a moment to  
3 review that.

4       A.     (Reviewing.)  Okay.

5       Q.     Have you seen these kinds of workplace  
6 posters before?

7       A.     Yes, I have.

8             MR. ROBB:  Now -- well, before I forget.  
9 Your Honor, we would offer Exhibit 560.

10            THE COURT:  560 is offered.

11            MS. BASHAW:  No objection.

12            THE COURT:  560 is admitted.

13                       EXHIBIT ADMITTED

14 BY MR. ROBB:

15       Q.     Now, how does an understanding of these  
16 reflect on the -- of the 12 conditions that you have  
17 identified in the education that's talked about in  
18 Exhibit 2 and we've looked at, relate to these posters?

19       A.     One of the conditions that I talked about is  
20 knowledge of your rights, and certainly these are  
21 rights that you will find, say, in the Bill of Rights,  
22 but there are other kinds of rights that we have, too.  
23 We have all sorts of rights in the workplace.

24             And, again, I would argue, as I said before,  
25 that if you don't know what your rights are or how to

1 exercise them, then there is some chance that those  
2 rights are going to be violated.

3 Q. And as part of understanding your rights is  
4 being able to understand information like this.

5 A. That is correct.

6 Q. And flipping through this, you notice there's  
7 discussion of state law and federal law as well.

8 A. That's correct.

9 Q. So would that include being able to  
10 understand the intersection of federal and state law?

11 A. That is correct. Again, also -- I'm sorry.

12 Q. No. Continue.

13 A. And also to be able to know what to do if you  
14 think that your rights have been violated. Again, you  
15 have to know your rights. You have to value your  
16 rights. It's -- as with the whole notion of freedom,  
17 when I was talking about freedom, you have to know what  
18 freedom is. You have to have the power to exercise  
19 it. You have to have a philosophical insight to value  
20 it, and the same thing with your rights. Which is why  
21 George Washington was saying not only know your rights  
22 but value your rights, but, also, then to know to value  
23 and to know what to do if you think they've been  
24 violated in order to be, again, an active, authentic  
25 citizen of a democracy.

1 Q. Now, part of the knowing what to do when your  
2 rights are violated and what happens when rights are  
3 violated would be what happens in this courtroom,  
4 correct?

5 A. That's correct.

6 Q. So participation in a jury, for example,  
7 that's part of our role as citizens; is that true?

8 A. That's part of our roles as citizens.

9 Q. Would you turn to Trial Exhibit 561, please.  
10 It should be in that same binder.

11 A. Okay.

12 Q. Have you reviewed Trial Exhibit 561 in the  
13 course of your work?

14 A. (Reviewing.) Jury instructions, yes.

15 MR. ROBB: Your Honor, before I forget,  
16 petitioner would offer Trial Exhibit 561.

17 MS. BASHAW: Well, Your Honor, I would  
18 object. They're not relevant. This witness was also  
19 in the disclosure not identified as someone who would  
20 speak to this particular exhibit. It was not listed in  
21 his disclosure as something that he would have relied  
22 on, and we object on those two bases.

23 THE COURT: All right. Let me reserve on  
24 this until I hear the witness's testimony to decide  
25 whether it should be admitted or not. So I will allow

1 it for foundational purposes to inquire and then  
2 determine whether it should be admitted or not.

3 MR. ROBB: Okay.

4 BY MR. ROBB:

5 Q. So, looking at Exhibit 561 -- you have it in  
6 front of you now?

7 A. (Witness nods head.)

8 Q. You were talking earlier about how being able  
9 to understand and have that background knowledge is  
10 important to understanding and exercising your rights.

11 How does this exhibit figure into that?

12 A. I think this, again, is an example, if you  
13 were going to exercise your rights as citizens or as a  
14 juror, that there is a certain minimal level of  
15 understanding of intellectual work that has to go on  
16 here.

17 For example, jury instruction seven, the  
18 words are all there and individually might be clear to  
19 people, but this is surely something more than  
20 elementary reading.

21 "A transfer made by debtor is fraudulent as  
22 to a creditor whose claim arose before the transfer is  
23 made. If the transfer is made to an insider for an  
24 antecedent debt, the debtor was insolvent at that time  
25 and the insider had reasonable cause to believe that

1 the debtor was insolvent."

2           This takes a little bit more than basic  
3 elementary skills and reading to understand what's  
4 going on here.

5       Q.     And so, this would be another example of the  
6 kind of reason that you need the understanding -- the  
7 education that we've talked about from your 12  
8 conditions and Exhibit 2.

9       A.     That's correct.

10      Q.     Okay.

11           MR. ROBB: We would again offer the exhibit,  
12 Your Honor.

13           MS. BASHAW: The same objection. This was  
14 not revealed to respondents as something this witness  
15 would rely on in his testimony, and it's not relevant.

16           THE COURT: I think the witness is using  
17 Exhibit 561 as an example to support his theories and  
18 opinions set forth in the 12 conditions. The court  
19 will admitted 561 for that purpose.

20           MR. ROBB: Thank you, Your Honor.

21           THE COURT: 561 is admitted.

22                   EXHIBIT ADMITTED

23 BY MR. ROBB:

24       Q.     Would you please turn to Trial Exhibit 564.

25       A.     (Reviewing.) Okay.



1 Q. You have that in front of you now?

2 A. I do.

3 Q. Okay. This description of jury instruction  
4 for nonresidential tenancies, the landlord  
5 instructions, is being able to understand your rights  
6 on a lease and other documents like that, part of also  
7 the education that you've been talking about?

8 MS. BASHAW: Objection, leading.

9 BY MR. ROBB:

10 Q. How does Exhibit 564 fit into your opinions  
11 that you're offering in this case?

12 A. I didn't understand what was going on here.

13 THE COURT: That's all right. He rephrased  
14 the question, so just --

15 THE WITNESS: I'm sorry.

16 THE COURT: -- just answer the rephrased  
17 question.

18 THE WITNESS: Would you please ask the  
19 question?

20 BY MR. ROBB:

21 Q. Sure. I was asking you how Trial Exhibit 564  
22 relates to the opinions that you're offering in this  
23 case.

24 MS. BASHAW: And, at this point, I would  
25 object on lack of foundation. Again, this is not an

1 exhibit or information that was revealed to respondents  
2 that this witness would be relying upon in rendering  
3 opinions in this case.

4 THE COURT: All right. The exhibit itself  
5 has not been offered at this point, but the question is  
6 appropriate and I will allow it. The objection is  
7 overruled.

8 You may answer the question.

9 THE WITNESS: Thank you. I think this is an  
10 additional example of the kinds of rights, the kinds of  
11 exchange, the kinds of how we need to be able to  
12 conduct ourself in a free society. This is one more  
13 example of, in order to be able to exercise your  
14 rights, you have to have a certain minimal level of  
15 knowledge and skills.

16 BY MR. ROBB:

17 Q. Okay. And in terms of a lease as well as  
18 understanding a contract?

19 A. That's correct.

20 Q. Okay. And did you review this document in  
21 coming -- did you review this document in your work in  
22 this case?

23 A. Yes, I did.

24 MR. ROBB: Your Honor, the petitioners would  
25 offer Trial Exhibit 564.

1           MS. BASHAW: Again, this was not revealed to  
2 respondents as something that this witness relied  
3 upon. Both parties exchanged disclosures as to what  
4 our witnesses' opinions were going to be and what  
5 documents they were going to be relying upon. This was  
6 not revealed to respondents.

7           MR. ROBB: We did reveal that Dr. Soder --  
8 Professor Soder is relying upon his scholarship, his  
9 experience over the course of his work. And what we  
10 disclosed in the course of this, and by agreement, is  
11 the particular reports that the experts, various  
12 experts, created in part of their work.

13                   Professor Soder's testimony is not based  
14 on the report that he's created for this work but on  
15 the scholarship over the past 35 years and his  
16 experiences.

17                   We would offer this to illustrate --

18           THE COURT: And I think that's what its  
19 purpose is. It's for illustrative purposes.

20           MS. BASHAW: Well, then, okay. For  
21 illustrative, but that doesn't mean it gets admitted.

22           THE COURT: Well, actually, the rule on  
23 illustrative purposes is interesting. It may allow for  
24 admission for illustrative purposes. It's at the  
25 discretion of the court. So I don't think it really

1 matters much in terms of the witness's testimony, but I  
2 think in terms of his testimony stands for completion  
3 of the record, I think the record would be much clearer  
4 if the exhibit were part of it.

5 MS. BASHAW: Well, to the extent that  
6 respondents are prejudiced by not being told that they  
7 would be relying on these documents before we took his  
8 deposition. We would object again as to going into  
9 particular documents that were not identified to us  
10 that we were not able to ask him questions about in his  
11 deposition.

12 THE COURT: Well, again, you know, I don't  
13 think this is substantive evidence. This has nothing  
14 to do with this case at all. This is not a landlord-  
15 tenant case. This is an illustration of the  
16 professor's opinion with respect to the level of  
17 education and understanding that a common citizen might  
18 need. I think it's exemplary only. And for the  
19 purposes of an example or illustration, it is  
20 appropriate.

21 564 is admitted for that purpose.

22 EXHIBIT ADMITTED

23 MR. ROBB: Thank you, Your Honor.

24 BY MR. ROBB:

25 Q. I'd like to turn to one more example. If you

1 could go to Exhibit 662, please. If I could trade you  
2 again.

3 A. 662?

4 Q. Yes, sir.

5 Can I ask you first if you reviewed the  
6 deposition testimony of Secretary of State Sam Reed?

7 A. Yes, I did.

8 Q. And how did that relate to the opinions that  
9 you're offering here today?

10 MR. ROBB: The deposition testimony of Sam  
11 Reed.

12 MS. BASHAW: Your Honor, first of all, we  
13 have an objection on the record already as to this  
14 document. Petitioners are trying to admit this through  
15 Sam Reed. Again, this was not revealed to the  
16 respondents as something that this witness would rely  
17 upon in rendering opinions.

18 Respondent's being prejudiced by not  
19 being able to ask him questions in his deposition about  
20 these documents and to explore his opinions. And so  
21 for that reason and the reasons that we provided with  
22 Sam Reed's deposition testimony, we object to the use  
23 of this document.

24 THE COURT: I don't think the document's been  
25 addressed yet either by way of offer or by way of

1 testimony. The question was whether they read the  
2 deposition of Sam Reed. That's the pending question;  
3 is that correct?

4 MR. ROBB: That's correct, Your Honor.

5 THE COURT: So we'll have to take your  
6 objection at the time that it's appropriate. But the  
7 pending question is not objectionable. The objection  
8 is overruled at this time.

9 You may answer the question with a yes  
10 or no as to whether you read the deposition.

11 THE WITNESS: I have.

12 BY MR. ROBB:

13 Q. And how did that relate to your opinion --  
14 the trial opinion in this case?

15 A. I think, again, there -- this is the voters  
16 pamphlet and there are --

17 MS. BASHAW: I'm sorry, Your Honor. I didn't  
18 hear the answer to the question about Sam Reed and  
19 reading his deposition.

20 THE COURT: He said he had.

21 MS. BASHAW: He had.

22 MR. ROBB: Yes.

23 MS. BASHAW: Okay.

24 MR. ROBB: You may proceed.

25 MS. BASHAW: What's the next question?

1           MR. ROBB: The next question was how it  
2 relates to his opinion in this case.

3           MS. BASHAW: Okay. Again, I'm going to  
4 register my objection. This was not revealed to us.  
5 It's not been identified that he has read Sam Reed's  
6 deposition or any of the exhibits to it. We object to  
7 it on relevance grounds.

8           And petitioners are trying to admit it  
9 through Sam Reed. We're objecting to it on that basis  
10 as well here and the fact that we've been prejudiced by  
11 not knowing that he will be relying on Sam Reed's  
12 deposition or this document.

13          MR. ROBB: Well --

14          THE COURT: Mr. Robb?

15          MR. ROBB: -- he hadn't reviewed Sam Reed's  
16 deposition at the time of his own deposition because  
17 there was a significant delay in getting that testimony  
18 into the record and, so, one way or the other, there  
19 was no deposition at the time his deposition was  
20 taken.

21                 This is also part of the general subject  
22 matter that we disclosed that Professor Soder would be  
23 discussing, which is the way that education and  
24 democracy are related and what the implications of that  
25 are. This is -- we're talking about voting, which is,

1 I think, pretty central to the issue.

2 MS. BASHAW: Well --

3 THE COURT: Ms. Bashaw?

4 MS. BASHAW: -- a couple of things. There's  
5 such a thing of supplementing, so petitioners could  
6 have supplemented the disclosure for Mr. Soder,  
7 Professor Soder and they did not do so.

8 Respondents asked for the identification  
9 of materials that he would be relying upon, and it was  
10 just this general, my years of experience and the  
11 things that I've written. Well, he hasn't written this  
12 nor had he written any of the other documents. And so,  
13 again, we would lodge our objections.

14 MR. ROBB: As with the previous exhibits  
15 we've been discussing, this is exemplary of the kind of  
16 education and helps explain what kind of education  
17 Dr. Soder -- Professor Soder is talking about as he's  
18 rendering his opinions in this case.

19 I think that voting is well within the  
20 democracy that we identified Professor Soder would talk  
21 about.

22 THE COURT: All right.

23 MS. BASHAW: Well, that's a different  
24 question than -- when you're asking him about how  
25 voting fits in with things is one thing versus trying



1 to introduce exhibits through him that we have no  
2 awareness that he would be using to rely upon in  
3 rendering opinions.

4 THE COURT: I'm sorry. I forgot the pending  
5 question. I think it was the degree to which he relied  
6 on --

7 MR. ROBB: Relied on Secretary of State Sam  
8 Reed's --

9 THE COURT: Deposition.

10 MR. ROBB: -- deposition. Exactly, Your  
11 Honor, and --

12 THE COURT: All right. I'm going to hear the  
13 testimony and I will consider striking it from the  
14 record if I think it's outside the scope of this  
15 witness's disclosed opinion. So I'm reserving on the  
16 objection and I'll hear the answer.

17 MR. ROBB: Okay.

18 BY MR. ROBB:

19 Q. So we were about to talk about democracy in  
20 Washington.

21 A. One of the conditions, again, is the  
22 difference between a persuaded audience and a more  
23 thoughtful public. I think what we find in the voters  
24 pamphlet, if you look particularly at it for  
25 illustrative purposes, on page 11, initiative measure

1 985, which, as I recall, went down to defeat by 60/40  
2 vote last November.

3           In order to be a more thoughtful public and  
4 to be able to make thoughtful decisions, long-term  
5 decisions, which is also related to the last condition  
6 about long concepts of time and implications of  
7 decisions. If you look at 985, both pro and con, it  
8 would take a fair amount of background, not only in  
9 knowledge of your rights but just fundamental knowledge  
10 of, you know, how to work through the math here, let  
11 alone all the implications if we do this then this  
12 would happen, if we do that then this would happen.  
13 And, in order to have a more thoughtful public, you  
14 will have to have an educated populous that will be  
15 able to deal with the data that is here in this voters  
16 pamphlet on 985. This was an example -- one more  
17 example.

18       Q.     For instance, the fiscal impact statement  
19 that's on pages 12 and 13.

20       A.     Yeah. We start with page -- if you go  
21 through --

22       Q.     Starting on page 11.

23       A.     Page 11 and continue on, when I looked at  
24 this and looked at it again, I still -- I know how I  
25 voted on this one, but I, myself -- and I have some

1 reasonable background in math and statistics and fiscal  
2 analysis -- and this was a demanding task.

3 Q. And this also -- you mentioned earlier the  
4 notion of time and how things affect us over time.

5 Would that be part of understanding this as  
6 well and these sorts of initiatives?

7 A. Indeed it would be. There's short-term  
8 implications of this sort of initiative and then there  
9 are long, long-term implications.

10 Q. Both on the revenue side and otherwise?

11 A. Yes.

12 Q. What about the initiative process and voting  
13 process in Washington, generally? How does that impact  
14 here? We're talking about participation and democracy  
15 here in Washington.

16 A. Yeah. Washington State has many, many  
17 boards. There are fire boards, there are hospital  
18 boards, there are cemetery boards, you know, all sorts  
19 of ways that people participate and need to  
20 participate. A cousin of mine was on the fire board  
21 out in Lynnwood, Washington many years ago, and I  
22 talked with him about what it took in order to  
23 participate at that level. Or even then, again, if a  
24 citizen wanted to deal with some issue with the fire  
25 board, they have to have, again, the knowledge and

1 skills in order to be able to do that.

2           So in addition to initiatives and voting for  
3 governor and that sort of thing, we have all sorts of  
4 levels of boards and ways that the people participate  
5 in a democratic society.

6       Q.     Now, turning back to the education that  
7 you've talked about, the 12 conditions and then Trial  
8 Exhibit 2, do you have any opinion as to whether  
9 students in the State of Washington -- all students in  
10 the State of Washington are receiving that kind of  
11 education?

12       A.     Yes, I have an opinion. Again, based on many  
13 years in this field and that all students are not  
14 receiving the kind of education they need to have in  
15 order to learn about those 12 conditions, in order to  
16 be effective, active, authentic citizens in a  
17 democracy.

18       Q.     As described in Trial Exhibit two.

19       A.     (Witness nods head.)

20       Q.     Is that a yes?

21       A.     Correct.

22       Q.     Why? What is the basis of your opinion?

23       A.     I see the students, not only over the years  
24 when I visit schools and talk to students or when I  
25 worked in education advocacy organizations with the

1 University of Washington over these many years, I see  
2 students who come out of Washington State schools.  
3 Most of the students in my classes have come out of  
4 high school out of Washington schools. I've seen them  
5 in my honors classes, the brightest of the bright. I  
6 see them in my other undergraduate classes. I work  
7 with people who want to become teachers. I work with  
8 people who want to become administrators.

9           It is my opinion that many of these students,  
10 and these are the students who have gone through high  
11 school and got admitted to the University of  
12 Washington, that many of these students have no real  
13 serious understanding of those 12 conditions and what  
14 it takes to be a good citizen in a democracy.

15           I would argue a fortiori if that is so, if  
16 those who have actually gone through high school or are  
17 considered to be successful students and that many of  
18 these students are lacking, then how many more so than  
19 for those who did not end up at the University of  
20 Washington, let alone the fourth of those students who  
21 never graduated from high school to begin with.

22       Q.     And were those -- did you work with those  
23 sorts of students at Neabay and then when you came to  
24 work at the Urban League?

25       A.     I have worked with all sorts of students. I

1 teach classes that deal with questions  
2 disproportionality or the early achievement gap, and it  
3 has been clear to me for a long time that schools are  
4 particularly not working for low-income students. They  
5 are particularly not working for African American  
6 students, for Hispanic students, or American Indian  
7 students. There's a wealth of data out there as has  
8 been for many, many years.

9           I'll give you an example. When I was first  
10 working at the University of Washington at the Bureau  
11 of School Research on the Voucher Study, I obtained  
12 copy number six of a report on disaggregated student  
13 achievement scores, disaggregated in terms of the five  
14 basic groups we use, Caucasian, Black, Asian, et  
15 cetera. I have copy number six not to be released or  
16 taken out of this office, and somehow I made off with  
17 it by accident, and I just had it there. But it was a  
18 few years later when we started working between the  
19 University of Washington and Seattle School District,  
20 as I mentioned yesterday, on the Effective Schools  
21 Project, the fundamental premise of that whole project,  
22 the premise adopted by the Seattle school board was  
23 that schools were not working for all children and  
24 that, particularly, they needed to work on the  
25 achievement gap. And instead of hiding the data, as

1 they did when they disaggregated it in 1968, now they  
2 had all of those data out front as they had since  
3 then.

4           So, schools are not working for many  
5 students. They're working for some students in the way  
6 that I'm talking about working, but, most assuredly,  
7 they are not working for all students.

8       Q.     Do you think they can work for all students?

9       A.     Yes, I do.

10      Q.     Why is that?

11      A.     We have seen examples here and there of  
12 public schools that can meet the needs, not only of the  
13 test-bright students, but of all students. There have  
14 been data that I have looked at that I helped obtain  
15 and analyze that suggested in Seattle schools that  
16 there were some elementary schools where disadvantaged  
17 minority youth and poor youth were showing achievement  
18 gains at a greater gain level than those for, say,  
19 Caucasian or Asian kids. So all of the students in the  
20 school were gaining but some were gaining at a faster  
21 rate than most, thus, they were starting to deal with  
22 reducing the achievement gap.

23           I think that we can do these things. I  
24 have -- and here in Washington State and other parts of  
25 the country, I have seen examples of schools that

1 work. The -- if I may.

2 Q. Certainly.

3 A. The difficulty here is how to sustain these  
4 gains. I indicated yesterday that one of my areas of  
5 expertise and research is organizational change. What  
6 we know happens is that some sort of new program comes  
7 in, people are initially excited and for a year or two  
8 they carry on. And that's then when it gets tough.

9 Now, there's an ancient Chinese saying that  
10 says that when a journey is 90 percent complete, it's  
11 half over. So, too, with schools.

12 And the challenge that we face is not only to  
13 identify those educational practices, which I can talk  
14 a bit more of, but then how to figure out how to  
15 sustain those changes over time. That is tremendously  
16 demanding work.

17 Q. And is this part of your work you mentioned  
18 yesterday, your center for renewal. I have the name  
19 wrong, I'm sure, but can you direct me?

20 A. The Center for Education Renewal?

21 Q. Yes, sir.

22 A. Yes. What I'm saying here is part of our  
23 work there, which we had continued for more than 20  
24 years, and that work still continues today, the people  
25 that funded us recognized the need for long-term,



1 sustained involvement. We had received funding from  
2 virtually every major foundation in the country except  
3 one. Major funding came from the Exxon Education  
4 Foundation, which gave us funding for 16 years, almost  
5 unheard of in this business because most foundations  
6 will give you money for two or three years and then  
7 expect to have results. But this has to be sustained  
8 over time, and I specifically have used the word  
9 renewal rather than reform, and I think it's an  
10 important distinction to make, and it's not just a  
11 matter of semantics.

12 I edited a special session of national  
13 publication called by Phi Delta Kappan that dealt with  
14 the distinction between reform and renewal. Renewal is  
15 an on-going process rather than just something that you  
16 do and then we're done with it and we can say, okay,  
17 let's go on and work on something else.

18 Q. And so, based on your work, your experience,  
19 your scholarship, and your work at the Center For  
20 Educational Renewal, you believe that all kids can be  
21 provided with an education that you've identified in  
22 your scholarship and that we've discussed in Trial  
23 Exhibit 2?

24 A. Yes, I believe that.

25 MR. ROBB: Your Honor, we would offer again

1 Exhibit 662.

2 MS. BASHAW: My objections remain the same,  
3 Your Honor.

4 THE COURT: 662 is admitted for illustrative  
5 purposes only.

6 EXHIBIT ADMITTED

7 MR. ROBB: Thank you, Your Honor.

8 I'm going to ask -- I don't believe we  
9 need to go through the normal qualification process,  
10 but -- of Professor Soder as an expert.

11 THE COURT: You do not, counsel.

12 MR. ROBB: Okay. Thank you.

13 Nothing further, Your Honor.

14 THE COURT: Thank you, Mr. Robb.

15 Ms. Bashaw, cross-examination.

16 CROSS-EXAMINATION

17 BY MS. BASHAW:

18 Q. Good morning, Professor Soder.

19 A. Good morning.

20 Q. Now, I thought that Herodotus -- you  
21 mentioned Herodotus, and I thought that he predated by  
22 almost 50 years in terms of writing about the -- being  
23 the first historian writing about the Persian and  
24 Greek --

25 A. Yeah, he did.

1 Q. -- War from Thucydides, correct?

2 A. Correct.

3 Q. Okay. I thought you -- I heard you say  
4 Thucydides was the first historian.

5 A. Well, when I meant the first historian, I  
6 should have qualified that. Most scholars would say  
7 that Thucydides was the first scientific historian.

8 Q. All right.

9 A. But, surely, Herodotus precedes anymore than  
10 the Persian War preceded the Peloponnesian War.

11 Q. Thank you for the history lesson. I  
12 appreciate that.

13 A. I'm trying to answer your question.

14 Q. Now, its my understanding that you believe  
15 that Washington is not providing all students with the  
16 knowledge and skills necessary to participate  
17 authentically and actively in a democracy.

18 Is that in a nutshell what your opinion is?

19 A. That's correct.

20 Q. And what particularly is it that Washington's  
21 not doing?

22 A. Well, as I indicated, the state and its  
23 schools are not meeting the needs of many, many  
24 students, many, particularly, African American  
25 students, Hispanic students, Indian students, students

1 on free and reduced lunch programs. Students who have  
2 some of those advantages would still, for one reason or  
3 another, it has not been in the curriculum, it has not  
4 been taught, or has not been learned at any rate, in  
5 terms of what I've been talking about, in terms of the  
6 12 conditions, and, more generally, what it takes to be  
7 a good citizen.

8 Q. Now, I believe that you said that civics was  
9 one of the important courses or areas in which our  
10 schools should be teaching.

11 A. Yes.

12 Q. And the Constitution, would that be one as  
13 well?

14 A. That's part of it, yes.

15 Q. All right. The State Constitution and the  
16 U.S. Constitution.

17 A. That's part of it.

18 Q. Okay.

19 MS. BASHAW: May I approach, Your Honor?

20 THE COURT: You may, counsel.

21 BY MS. BASHAW:

22 Q. Professor Soder, I've handed you a copy, down  
23 in the right-hand corner, of RCW 28A.230.170, and it  
24 states that, "The study of the Constitution of the  
25 United States and Constitution of the State of

1 Washington shall be a conditioned prerequisite to  
2 graduation from the public and private high schools of  
3 the state."

4 Do you see that?

5 A. I see that.

6 Q. Were you aware that that was a requirement in  
7 our schools?

8 A. Yes.

9 Q. Okay. Now, you're also aware that the state  
10 has what has been referred to as the EALRs?

11 A. Yes.

12 Q. And you don't have any particular problem  
13 with the EALRs.

14 A. That's what I indicated in my deposition,  
15 yes.

16 Q. All right. And so the EALRs would be --  
17 teaching the EALRs would be one aspect of trying to  
18 reach the goal that you're referring to.

19 A. In part, yes.

20 Q. Okay. And are you aware of any quantitative  
21 data that's out there that substantiates that children  
22 going through the public common school system do not  
23 have the 12 conditions that you identified.

24 A. Well, there's nothing about the WASL in  
25 social studies to begin with at this point. I have

1 looked over the years at -- when the Seattle School  
2 District, for instance, was using, Iowa Test of Basic  
3 Skills or Metropolitan Achievement Test to get some  
4 indication of what was being learned.

5           More of the data that I'm talking about in my  
6 specific reference comes from my own experience at the  
7 University of Washington where I worked every day in  
8 class with students who supposedly have gone through  
9 the schools and have been, you know, addressing these  
10 matters that you're talking about here, Constitution or  
11 the EALRs or what have you.

12       Q.     Excuse me. But you're not aware of any  
13 quantitative data that substantiates the relationship  
14 between education and the democracy that you've  
15 described.

16       A.     Not specifically.

17       Q.     So you agree with that.

18       A.     Yes.

19       Q.     And you're also not aware of any state that  
20 has been able to accomplish the goal that you've  
21 identified.

22       A.     That's what I've indicated.

23       Q.     And you're not aware of any other democratic  
24 country that has been able to accomplish the goal that  
25 you've identified.

1       A.     Again, not for all, for some, in this state,  
2 in this country or other countries.

3       Q.     And isn't it true that, in order to achieve  
4 the goal that you've described, that the only thing  
5 that the state should do differently is to take it  
6 seriously?

7       A.     I could amplify that a little bit if you  
8 wish.

9       Q.     Well, right now I'm just looking for what it  
10 is that you've told us in your --

11      A.     Okay.

12      Q.     -- deposition that the state should do  
13 differently and at that time you said just take it  
14 seriously. Isn't that true?

15      A.     Well, I could amplify what taking seriously  
16 means, certainly. For instance --

17      Q.     Well, first as to that question, can you  
18 answer that question? That when you testified as to  
19 what the state should do differently than its already  
20 doing, your answer was to take it seriously.

21      A.     That's correct.

22      Q.     All right. And as part of your work in this  
23 case, your assignment was not to consider what steps  
24 the State of Washington must take in order to cure the  
25 deficiencies that you've talked about --

1       A.     Not.

2       Q.     -- as part of your assignment.

3       A.     Not specifically, although certainly if you'd  
4     been working in this field as long as I have, you are  
5     certainly going to consider very seriously the policy  
6     and pedicological implications of what I've been  
7     working on all these decades as I have.

8       Q.     Okay. But your assignment in this case was  
9     not to identify what it is that -- what steps the State  
10    of Washington must take to cure --

11    A.     Not specifically.

12    Q.     -- deficiencies.

13            Are you able to quantify if the State of  
14    Washington was to do something differently to try and  
15    accomplish the goals that you've identified, are you  
16    able to quantify what level of improvement in the  
17    achievement tests, the WASL tests, students would have?

18    A.     We could, yes, and that happened -- that  
19    happened to be part of one of the implications dealing  
20    with civic education assessment and how you would try  
21    to understand what students were learning. It's a  
22    very, very difficult process. It's easy to develop a  
23    test to find out whether students know, at least  
24    temporarily, what the three branches of government  
25    are. But I indicated, as George Washington, you not



1 only have to know your rights, for example, you have to  
2 value them. And, in order to understand whether that's  
3 happening, that would take a somewhat complex series of  
4 assessments. But, yes, you could do it.

5 MS. BASHAW: Publish Professor Soder's  
6 deposition. May I approach, Your Honor?

7 THE COURT: You may, counsel.

8 BY MS. BASHAW:

9 Q. Do you recall on June 26th of this year that  
10 my colleague, Mr. Clark, took your deposition?

11 A. Yes.

12 Q. And Mr. Ahearne was present. Do you recall  
13 that?

14 A. Yes.

15 Q. And you were under oath.

16 A. Yes.

17 Q. And you were asked questions and you gave  
18 answers.

19 A. Correct.

20 Q. And you provided truthful answers.

21 A. True.

22 Q. All right. So if you could turn to page 71,  
23 and starting at line four, I'm going to read the  
24 questions and answers and you tell me if I've read that  
25 correctly.

1           "Question: If Washington were to take steps  
2 to cure the deficiencies in the education that you  
3 perceive as a deficiency that relates to the ability to  
4 produce educated citizenry that meaningfully  
5 participates in our democracy, if we take steps to cure  
6 the deficiencies that you found in that regard, how  
7 much improved performance for Washington students can  
8 we expect will occur? Answer: I can't quantify that.  
9 We would expect to find improvement. We would expect  
10 to find that all students would be better in terms of  
11 their knowledge and their skills. Question: But you  
12 can't tell us quantitatively what kind of improved  
13 levels of performance we can expect. Answer: No."

14           Did I read that correctly?

15       A.     Yes.

16       Q.     Thank you, Professor Soder.

17           And you've also not undertaken any kind of  
18 specific analysis as part of your work in this case to  
19 evaluate the student outcomes as it relates to the 12  
20 conditions.

21       A.     That's correct.

22       Q.     Okay. If the State of Washington were to  
23 cure -- take it more seriously, you also don't know how  
24 long it would take to get the improvement in  
25 performance if we're to take it more seriously.

1       A.     I couldn't identify a specific length of  
2 time. Obviously it doesn't happen overnight. But I  
3 don't know whether you want to say it would be a matter  
4 of years or a matter of decades.

5       Q.     And you're not able to tell us.

6       A.     That's correct.

7       Q.     And you also don't know how much more money  
8 would be needed in this system in order to attain the  
9 goals of that you've described.

10      A.     That's correct.

11      Q.     And you've done no analysis of funding or  
12 lack of funding in order to make a connection between  
13 that and not attaining the goals that you've described.

14      A.     That is not my area of expertise.

15      Q.     Now, you indicated that you educate  
16 teachers. You teach teachers is that --

17      A.     That's correct.

18      Q.     Did I understand correctly?

19      A.     You have.

20      Q.     And teacher education is pretty complex, is  
21 it not?

22      A.     It's all complex.

23      Q.     Okay. And have you been able to identify the  
24 type of person it is that would be able to become the  
25 type of teacher that we would need within our schools

1 to be able to teach the things that you've identified  
2 as being necessary?

3 A. My colleagues and I work on that constantly.  
4 The reason why we work on those kinds of traits that I  
5 believe that you are talking about is that, unless you  
6 believe that a teacher education program was totally  
7 appicacious (phonetic), that is to say that you could  
8 take a very bad person and turn them into a good  
9 teacher, unless you believe that program is totally  
10 appicacious (phonetic), then you are going to have to  
11 select, then, people on the basis of the traits that  
12 you think are of fundamental importance because you  
13 cannot change those in a teacher education program in  
14 one year.

15 Q. And, so it's true that you have to continue  
16 to try to sort out to identify the right variables to  
17 look at in order to identify the people to bring into  
18 your teaching program.

19 A. That's correct.

20 Q. And you've been trying to do that since  
21 1985.

22 A. Well, certainly longer than that but at least  
23 since 1985.

24 Q. And you haven't come up with the right mix  
25 yet.

1       A.     I think we are doing a better job than we  
2     used to by far. We spent a great deal of time in  
3     trying to determine who we are going to admit to our  
4     teacher education programs, which is a lot different  
5     than the way it used to be.

6             One of our fundamental findings on the  
7     study -- that national study of teacher education I  
8     referred to yesterday, is that teacher education  
9     programs at that time were somewhat lax in who they let  
10    get into a teacher education program. People were  
11    taking a number of courses and then all of a sudden it  
12    looked like they were ready to do their student  
13    teaching so they would do their student teaching.

14            And that was one of our specific  
15    recommendations that the selection process needed  
16    fundamental review. And most teacher education  
17    programs that I've seen, and I've worked with many of  
18    them, have placed a great deal of emphasis on who they  
19    select then to become a teacher --

20       Q.     And --

21       A.     -- that is to become a part of the teacher  
22    education program.

23       Q.     And how many students do you take into the  
24    education program in a year?

25       A.     Approximately 60 in elementary and

1 approximately 60 in secondary. It's a relatively small  
2 program.

3 Q. Is UW one of the smaller programs in the  
4 state?

5 A. Yes, it is.

6 Q. So do you know, generally, how many teachers  
7 are technically produced on a yearly basis in our state  
8 out of colleges and universities?

9 A. No.

10 Q. Now, you also don't know -- I asked you  
11 whether any democracies have been able to attain all  
12 the goals and you indicated that you're not aware of  
13 any that have. You're also not aware of how  
14 Washington's students compare to other democratic  
15 countries in terms of understanding and being able to  
16 effectuate these 12 conditions, right?

17 A. That's correct.

18 Q. Okay. Now, if you're faced -- if you would  
19 take a look at 564.

20 A. I don't have that.

21 Q. It's right here. You're at 564?

22 A. I have 564.

23 Q. Do you know what a WPI is?

24 A. No.

25 Q. What would you do to try and find the answer

1 to that?

2 A. I would probably look that up on the web.

3 Q. Okay. And if you didn't understand what was  
4 referenced here under this WPI 130.01.01, what would  
5 you do?

6 A. As I indicated, I would probably go to the  
7 web or I would probably talk to a friend.

8 Q. Okay. Now, let's turn to 560.

9 Do you speak any foreign languages?

10 A. No.

11 Q. Okay. So let's turn to about the fourth page  
12 in 560.

13 A. Yes.

14 Q. Do you know what language this is in?

15 A. It's in Spanish.

16 Q. All right. But you wouldn't be able to  
17 understand this document, right?

18 A. No.

19 Q. Okay. What would you do to find out what  
20 this document said?

21 A. I would go to someone who spoke Spanish.

22 Q. Okay. And let's look at --

23 MS. BASHAW: Is it 561 or 62?

24 MR. ROBB: 61.

25 MS. BASHAW: Thank you.

1 BY MS. BASHAW:

2 Q. Let's turn to 561. And I believe you were  
3 asked about jury instruction number seven.

4 Now, I went to law school, right? And, you  
5 know this isn't my area of expertise and I'm not sure I  
6 would necessarily understand this, but this was  
7 essentially written by lawyers, right?

8 A. I presume.

9 Q. Okay. And so if you were a juror and didn't  
10 understand this, what would you do?

11 A. Obviously you would seek information. You  
12 would ask questions --

13 Q. Okay.

14 A. -- for an explanation.

15 Q. Okay. And who would you ask that of?

16 A. In this case, the judge.

17 Q. All right. Now, let's go to the next one,  
18 jury instruction number eight.

19 If the individual were able to read English,  
20 do you think they'd understand the first sentence?

21 A. Are we on "You have been allowed to take  
22 notes during trial?"

23 Q. Right.

24 A. And what was the question?

25 Q. Well, would you expect that most people would



1 understand what that meant?

2 A. Yes.

3 Q. Okay. And so going back then to jury  
4 instruction number seven, when I asked you about what  
5 you would do if you didn't understand this and you  
6 indicated that you would go to the judge to seek some  
7 clarification, right?

8 A. Correct.

9 Q. Would you expect anybody else to do anything  
10 differently if they didn't understand it?

11 A. I would hope they would seek information.

12 MS. BASHAW: I have nothing further, Your  
13 Honor.

14 THE COURT: Thank you, counsel.

15 Mr. Robb?

16 REDIRECT EXAMINATION

17 BY MR. ROBB:

18 Q. I have just a few follow-up questions,  
19 Professor Soder.

20 The state's counsel directed you to this  
21 printout of RCW 28A.230.170.

22 A. Yes.

23 Q. And asked you about teaching the Constitution  
24 of the United States and Washington.

25 Would you agree that just having this written

1 down, this requirement in statute, doesn't necessarily  
2 reflect on the effectiveness of the teaching  
3 opportunity, the learning opportunity?

4 A. Absolutely it does not.

5 Q. Okay. And counsel also asked you -- counsel  
6 for the state also asked you about the EALRs and civic  
7 education.

8 Now, the civic requirement of the EALRs isn't  
9 currently tested by the State of Washington; is that  
10 correct?

11 A. That's correct.

12 Q. Now, counsel for the state also asked you  
13 about whether any state had -- or any democracy, I  
14 think is how she put it, had the kind of teaching that  
15 you're talking about.

16 Are you aware of any other state in the  
17 United States that has an education of all students as  
18 its paramount duty?

19 A. I have not looked at all of the state  
20 Constitutions. I know what Article IX says in this  
21 state.

22 Q. Okay. And it's the paramount duty of this  
23 state?

24 A. Yes.

25 Q. Okay. Now, counsel also asked you about

1 taking your statement in your deposition about taking  
2 some stuff seriously. You offered to amplify on that.  
3 I'd like to give you an opportunity to do that now.

4 A. There are implications -- four fundamental  
5 implications of my work and my opinion.

6 One is -- this is where I was trying to go  
7 with this notion of taking this stuff seriously. Words  
8 have to be taken very seriously. One of my books is  
9 called The Language of Leadership. I'm not talking  
10 about leadership on how to motivate people. I'm  
11 talking about words and how important those words are.

12 If we are going to move on the basis of the  
13 12 fundamental conditions that I've talked about, then  
14 there are four things that we are going to have to do  
15 in our schools.

16 One, we are going to have to pay particular  
17 attention to the curriculum. We can start with the  
18 EALRs. I have no particular problem with the EALRs.  
19 But they are awfully general. I'm saying that you have  
20 to say look at those 12 conditions, examine your  
21 curriculum to see where in that curriculum are you  
22 going to address, particularly, notions of the tension  
23 between freedom and order, for example.

24 So there's a lot of work that needs to be  
25 done in terms of the curriculum. There's a lot of work

1 that needs to be done in terms of pedagogy, and how you  
2 deliver that curriculum.

3           One of the things that I'm talking about here  
4 is that people have to learn how to talk with each  
5 other, how to advance claims, how do adduce evidence,  
6 how to learn how to disagree with each other without it  
7 being as zero-sum game. These sort of things take  
8 practice. It's not simply a matter of massing  
9 everybody together in the auditorium and say, okay, now  
10 be good citizens, in fact, even memorize the  
11 Constitution or study the Constitution. But you are  
12 going to have to figure out and consider the resource  
13 implications of how to make sure that students are  
14 learning how to engage in discourse, for example.

15       Q.     That involves different teaching styles?

16       A.     Different teaching styles, different  
17 structure of school day, different class size. Like I  
18 say, I do not see in any way how you can accomplish  
19 what I'm talking about by massing students together in  
20 a lecture. So that's a second implication.

21       Q.     So small class size is what you're saying?

22       A.     Small class size, absolutely.

23           The third implication is that we need to  
24 consider assessment. We can talk all we want about  
25 curriculum, and I, as a teacher, and every teacher that

1 I know knows full good and well that just because you  
2 taught something doesn't mean they learn it. We can go  
3 away at the end of the day saying I really covered all  
4 of that stuff about the Thucydides and it's all fine.  
5 Well, that's not enough. You have to find out whether  
6 they are learning it and learning what we're talking  
7 about.

8           And, again, I would come back to George  
9 Washington on that example where he says not only know  
10 your rights but value your rights.

11           Now, I've said those are -- can you quantify  
12 that? Perhaps I could have said when I said I don't  
13 know or no, that's part of the professor in me coming  
14 out. I have a fair background in psychometrics, and I  
15 know what some of the demands are in order to pull this  
16 off, let alone the financial demands. It costs a lot  
17 more to assess civic education in the areas of those 12  
18 that I'm talking about in an authentic way than it does  
19 simply by giving everybody a fill-in-the-bubble test.

20           And one of the articles that I mentioned that  
21 I wrote was talking about the double bind of civic  
22 education assessment. By that, I meant the double bind  
23 is is that, because of the financial crunch that we are  
24 in, we always end up with an assessment that is, in  
25 effect, quick and dirty, paper and pencil, multiple

1 choice tests.

2           So, for instance, if we wanted to put social  
3 studies into what was then the WASL, the only thing we  
4 could do is find out whether students could fill in the  
5 bubble about the correct answer for, you know, the  
6 three branches of government.

7           So it's an extremely difficult issue. But if  
8 we do want to take this seriously, we do have to say,  
9 not only what should be taught and how it should be  
10 taught, but how are we going to make sure that all of  
11 the students are learning.

12           And the fourth implication that we have to  
13 take seriously is connected to the notion of teacher  
14 education. One of the articles that I wrote is  
15 Teaching in a Democracy the Role of the Arts and  
16 Sciences in Teacher Education. You can't teach what  
17 you don't know. And I know from my own experience,  
18 year in and year out, that students that I have in  
19 teacher education know and don't know about those 12  
20 conditions.

21           So those are parts of the four implications  
22 of my work here when I say that we need to take -- if  
23 we want to take this seriously, those are the  
24 directions that I would move in.

25       Q.     And does taking it seriously have resource

1 implications as well?

2 MS. BASHAW: Objection, Your Honor. This  
3 goes beyond the scope of this witness's proffered  
4 testimony, and he, in cross-exam, indicated he was not  
5 involved in establishing any connection between the  
6 funding and the education system as it relates to his  
7 conditional goals.

8 MR. ROBB: I'm following up on what he had  
9 offered in cross-exam which Ms. Bashaw decided not to  
10 let him do, which is to explain what he means by taking  
11 it seriously.

12 MS. BASHAW: Well, but he also said he was  
13 not asked and does not know anything about funding. I  
14 believe he said -- he was not a funding expert and was  
15 not rendering opinions in that area.

16 MR. ROBB: Well, I'm not asking him to get  
17 into the minutia of school finance. I'm just asking  
18 him to speak generally about the resource implications  
19 of taking it seriously.

20 THE COURT: Well, I don't know if the  
21 witness's testimony is going to be outside the scope of  
22 what his prior testimony was without hearing the  
23 answer. So I will hear the answer and entertain a  
24 motion to strike at that time.

25 THE WITNESS: Question?

1 BY MR. ROBB:

2 Q. I believe I asked whether there were resource  
3 implications to --

4 A. Well, I can speak very generally, certainly.

5 If you need to have smaller class size, that  
6 means you need more teachers. You need more  
7 instructional time. And in order to have more  
8 instructional time, in order to have more teachers,  
9 then you're going to have to pay people.

10 So in a very general way, yes, there are  
11 resource implications. There are resource implications  
12 in the difference between assessing civic education,  
13 the sort of thing I'm talking about, with the multiple-  
14 choice test versus ways that I have looked at it in  
15 various parts of the country when people say, okay, how  
16 are we going to know whether students really know and  
17 value their rights. What would that take. And  
18 certainly it takes more when you're talking about more  
19 people, more time, more personnel, and that always  
20 means more money.

21 I certainly know that 80 percent of any  
22 education budget is salary and benefits.

23 MS. BASHAW: Your Honor, I would, again,  
24 renew my objection. This is beyond the scope of this  
25 witness's disclosure, both self-reported as well as



1 disclosed by petitioners to have him discuss resources.

2 THE COURT: Well, I think his testimony is  
3 fairly general, and I think it's consistent with his  
4 prior testimony regarding the school system taking  
5 these subjects seriously, so I will allow it. The  
6 objection is overruled. Motion to strike is denied.

7 BY MR. ROBB:

8 Q. Ms. Bashaw also asked about how long it would  
9 take to start seeing results of the program. I believe  
10 you said it would take -- you didn't know precisely; is  
11 that right?

12 A. That's right.

13 Q. Do you recall that?

14 A. Yes.

15 Q. And you said you didn't know if it would be  
16 years or decades. But, would you agree with me that if  
17 the state had started doing this in 1978, we would be  
18 well along the way by now?

19 MS. BASHAW: Objection, calls for  
20 speculation. Assumes facts not in evidence.

21 THE COURT: Well, it does assume facts not in  
22 evidence. I will allow it. Overruled.

23 MR. ROBB: You said you will allow it?

24 THE COURT: I will allow it.

25 MR. ROBB: Okay.

1 BY MR. ROBB:

2 Q. I asked if the state had begun doing this in  
3 1978 whether we would be further along by now.

4 A. Well, presumably we would be. I have  
5 reviewed civic education in this country going all the  
6 way back to around the turn of the century, and there  
7 has been a great deal of talk. There have been a great  
8 many reports that are written and people and social  
9 study teachers and everybody gets all excited about  
10 it. This is part of the work I've been doing,  
11 particularly when I wrote this chapter on double  
12 binding the civic education assessment. I looked at as  
13 many previous attempts that I could find in this  
14 country to assess civic education. And there has  
15 always been a fair amount of talk but very legal  
16 action, that if we had started laying the groundwork  
17 for some of this, well, then, I presume we would be a  
18 lot further down the road.

19 Q. Ms. Bashaw asked you -- state's counsel asked  
20 you about attracting teachers into the program that you  
21 have.

22 Could you talk a little bit more about  
23 attracting teachers, as to how many people apply to the  
24 program at the University of Washington, how many come  
25 through the program?

1       A.     Well, when I was teaching in that program,  
2     which I didn't -- I stopped doing that last year, we  
3     had approximately, maybe 150 to 200 people apply for  
4     the 60 slots, for say, elementary.

5       Q.     And is part of the problem in attracting  
6     teachers into the program, competition with other  
7     opportunities that they might have in the job market?

8             MS. BASHAW:  Objection, leading.

9             THE COURT:  Sustained.

10    BY MR. ROBB:

11       Q.     Can you talk a little bit about the problems  
12    that you faced at the University of Washington  
13    attracting teachers into the program?

14             MS. BASHAW:  Objection.  I think that also is  
15    going beyond the scope of cross.

16             MR. ROBB:  I think Ms. Bashaw was bringing up  
17    the question of teachers and their availability, how  
18    many are produced through this, so I'm just following  
19    up along that line.

20             THE COURT:  Overruled.  You may answer the  
21    question.

22    BY MR. ROBB:

23       Q.     You can answer the question.

24       A.     Could you --

25       Q.     I was asking about the competition in

1 attracting teachers, people into the teaching program.

2       A.     The College of Education has been working  
3 very diligently in trying to attract minority people  
4 into the teaching profession, particularly African  
5 American and Hispanic. I'd say it's a very difficult  
6 business because people who are attractive as students,  
7 who score well, also end up being attracted by people  
8 over in the business school and a lot of other places,  
9 and law and this sort of thing. So it's a difficult  
10 business to try to attract people who -- like I say,  
11 they have other avenues to go to.

12       Q.     Why is it important to the school of  
13 education to attract minorities, and I believe  
14 especially African Americans, into the teaching  
15 profession?

16       A.     Part of being a good teacher depends on  
17 having the respect and trust of your students. Thus,  
18 when I was working in Neabay for the school district,  
19 we had a number of programs that we put into place to  
20 help prepare local people, that is Indian folks, which  
21 is the term out there, to become teachers, because  
22 these teachers then would have an extra advantage in  
23 working with the students out on the Reservation. So,  
24 although we don't necessarily want to say that all  
25 teachers of any given ethnic background are, therefore,

1 going to be able to work effectively with all students  
2 of that same ethnic background, there's enough  
3 research, enough data that will suggest that it would  
4 be very helpful to have a teaching core that reflects,  
5 somewhat at least, the students out there, which we  
6 currently do not have.

7 THE COURT: Mr. Robb, we're at a little past  
8 our recess time and it seems like you've got some more  
9 questioning, Ms. Bashaw may have questioning, I have  
10 some questions, so we should probably take our morning  
11 recess at this time?

12 MR. ROBB: Okay.

13 THE COURT: We'll take our recess for 15  
14 minutes and resume at that time.

15 (Whereupon a recess was taken and there was a  
16 change in court reporters.)

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